

IN THE SENATE OF THE UNITED STATES.

MAY 28, 1896.—Ordered to be printed.

Mr. BACON, from the Committee on Naval Affairs, submitted the following

REPORT:

[To accompany S. 1968.]

The Committee on Claims, to whom was referred the bill (S. 1968) for the relief of the Mobile Marine Dock Company, having carefully examined same, respectfully report:

We adopt the report of this committee made during the first session of the Fiftieth Congress, and recommend the passage of the bill.

The bill has twice passed the Senate.

[Senate Report No. 484, Fiftieth Congress, first session.]

The claim was before the committee at the first session of the Forty-eighth and Forty-ninth Congresses and was fully investigated and favorably reported. The committee in considering the case have deemed it proper to deduct item "F," for \$15,936.16, in the account for "cost of repairing dock," from the aggregate account of \$101,938.81, which would leave a balance of \$86,002.65. This view was taken by the committee in its report at the first session of the Forty-ninth Congress, and upon a re-examination of the claim your committee is of opinion that as the repairs to the property were all made subsequent to the time that it was turned over by the Government to the owners and the petitioner received pay for the use and occupation of the property, the item should not be allowed.

The committee would therefore report the bill favorably and recommend its passage.

The following is Senate Report No. 190, first session of Forty-ninth Congress, and also Senate Report No. 565, first session Forty-eighth Congress:

After the capture and occupancy of the city of Mobile, in April, 1865, by the United States Army, it was determined that the interests of the Government demanded the occupancy and use of the property of the Mobile Marine Dock Company. The monitor *Osage* and the *Saint Mary* had been sunk in the bay. Other naval vessels required repairs, and the transports belonging to the Quartermaster's Department had to be refitted and kept in repair for the collection of the commissary, ordnance, and quartermaster's stores and the large amount of cotton which had belonged to the Confederate authorities. There was no other marine dock south of Charleston, those at New Orleans having been sunk.

The Mobile Marine Dock Company owned the requisite material for the repairing of the vessels of the Navy and of the Quartermaster's Department, and such materials could be found nowhere else on the Gulf coast, except at New Orleans. It was under these circumstances that the Government officials informed the officers of the Mobile Marine Dock Company that the interests of the Government required that the dock property should be either condemned for public use and paid for, or else that it should be placed under the exclusive control of the Quartermaster's Department for such time as the protection of Government interests might require, and for it then

to be returned to the officers of the company with reasonable compensation for the services rendered. The company elected the last alternative, and the property of the company, with its entire organized working force, including the superintendent and employees, were, on the 16th day of April, 1865, placed under the exclusive direction and control of the Quartermaster's Department and in the service of the Government. This control and service continued for seven months—until the 16th day of November, 1865—when it was redelivered to the officers of the company, after such use of material and such damage to the dock as the protection of Government interest rendered necessary and unavoidable.

Captain Runkle was the first quartermaster placed in charge of the dock property, and whilst under his direction the important work of raising and repairing the monitor *Osage* and the ship *Saint Mary*, and the repairing of five other vessels of the Navy, was completed. After Captain Runkle, Captain Ford was given control of the dock property; and after Ford, Captain Stewart was placed in charge, and so continued until relieved by the chief quartermaster of the Department of Alabama, Col. M. D. Wickersham, who then took charge, and soon thereafter restored the property to the control of the officers of the company. When the property was thus restored, the company, through its proper officers, made immediate claim for the promised "reasonable compensation," or else for the proper vouchers on the Quartermaster's Department to insure such payment. To this demand Colonel Wickersham replied that the work not having been done under his personal direction he had no such knowledge as would justify him in either paying the demand or in giving for it the usual quartermaster's vouchers, but that he would, as he did, turn over to the company the quartermaster's book and all the orders and vouchers for material furnished and work done which would be necessary for the making out and substantiating the claim. From the quartermaster's book and the orders and vouchers thus furnished the claim of the company was made out, and by the direction of the local military authorities was presented to the War Department for payment. The claim, having been referred to the Quartermaster-General, was returned by that officer to the War Department on the 20th day of June, 1868, with the remark that "under the act of February 21, 1867, claims arising in the State of Alabama during the rebellion could not be paid."

The claimants, on the presentation of their claim, had made request that a commission might be appointed to investigate and report upon the integrity of their claim and the correctness of the charges for services and material. Accordingly, after the return of the papers by the Quartermaster-General, the "board of claims" of the War Department made a preliminary report, recommending that the chief quartermaster and the assistant inspector-general of the Department of the South be deputed to make the investigation requested, with instructions to report through the Quartermaster-General. This recommendation was approved by the Secretary of War. The officers designated made their report to the Quartermaster-General in October, 1868, and it was forwarded to the Secretary of War by the Quartermaster-General on the 22d day of December, 1868, with the remark that the dock must have been used in aid of the rebellion, and was, therefore, liable to confiscation, and the owners were fortunate in having regained possession of their property through the leniency of the Government or the neglect of the officers in failing to institute legal proceedings for its confiscation; that the acts of Congress only authorized the confiscation of property of *natural* persons. They did not make the property of an *artificial* or incorporated body confiscable; therefore, the property in question was not liable to confiscation. This report, and all the papers submitted with the claim of the company, were then referred to the "board of claims" of the War Department, of which James A. Hardie, Inspector-General and brevet major-general was president, and George Gibson, major and brevet lieutenant-colonel, United States Army, was recorder. The board, on the 25th day of March, 1869, submitted their report, in which they say:

The amount of the charges, it is believed by the board, in view of the testimony collected, may reasonably be presumed to represent the value of the work done and of the material used. * * * The amount of damages to the dock, it may be presumed, was incurred.

The board find the facts to be substantially as follows. The claim is thus stated:

A. For seven vessels docked and repaired and materials furnished by order of Admiral Thatcher, United States Navy.....	\$27,070.95
B. For twenty-four vessels repaired by order of the military authorities.....	32,799.10
C. For four vessels of private owners docked and repaired by order of the military authorities.....	2,553.70
D. For lumber delivered for Army purposes.....	7,997.55
E. For material, etc., taken possession of by the Quartermaster's Department, April 16, 1865.....	15,781.35
F. Cost of repairing dock.....	15,936.16

Total..... 101,938.81

For arriving at the conclusion that the claim as thus stated might be accepted as substantially correct, the "board of claims" had before them the testimony of the officers of the company, of the quartermaster's clerk, of the quartermaster's book, of over a hundred quartermaster's vouchers, and the report of the commission appointed to proceed to Mobile and make careful examination into and report all matters touching the validity of the claim. It was after an evidently scrutinizing examination of this testimony that the board arrived at the result stated, and declared they had "exhausted the testimony."

There is no conflict in the testimony furnished by the company and that given in the report of the commission; on the contrary, there is entire agreement as to all material facts. That the claim is, in the language of the board, "substantially correct," is either frankly admitted or silently acquiesced in by all the Government officers whose duty it was made to examine into the matter. Nor is there any issue taken with the testimony of the company that the dock and material were by contract passed into the hands of the Quartermaster's Department under the explicit promise to allow and pay a "reasonable compensation" when the Government work should have been completed and its value ascertained. The change of quartermasters given charge of the property prevented a compliance with the contract, but that the obligation existed, as proved by the officers of the company, is not only corroborated by the action of the chief quartermaster in delivering to the company the quartermaster's book, with the orders and vouchers which were indispensable to the ascertaining and substantiating the claim, but is sanctioned in a communication from the chief quartermaster, who states, among the reasons for the noncompliance with the contract, the fact that a large portion of the claim was chargeable to the Navy and not to the Quartermaster's Department.

In its exhaustive examination of the matters of the dock company the "board of claims" gives the classification of a furnished list of stockholders, showing that while the chief interest and control was held by parties loyal to the Government, only eight small stockholders had given support to the rebellion.

Having completed its statement of the facts involved in the claim, the board in concluding its report suggests doubt as to the scope of the acts of Congress in limiting the authority of the War Department to pay any claims arising in States which had been declared to be in rebellion. In deference to this expressed doubt of the board of claims, Secretary Rawlins referred the claim of the dock company to the Attorney-General, with the request for his opinion upon the restraining limitation of the acts of 1864 and 1867 on the discretionary powers of the Secretary for the payment of the claim. This was done on the 3d day of April, 1869, and no response was made from the Attorney-General's office until the 3d day of January, 1872, the day after the claim was barred before the Court of Claims by the statute of limitations. The Attorney-General concludes his opinion as follows:

"I am of the opinion that the present claim originated during the war, and can not be settled by the War Department (13 Opinions Attorney-General, 555)."

The Attorney-General bases his opinion upon the assumed fact that the "dock" is real estate; whereas the "dock" is made of wood and iron, and floats on the water. Besides this, the opinion of the Attorney-General was given before the decision of the Supreme Court in the case of *The Union Bank vs. The Planters' Bank* (16 Wall., 485), and is in conflict with the principles of that and subsequent decisions. The fact of contract and entailed obligation to pay "reasonable compensation," is not considered in the Attorney-General's opinion. The opinion, however, was accepted by Secretary Rawlins as of controlling force in restraining him from paying the claim; and the retention of the papers in the Attorney-General's office from the 3d day of April, 1869, to the 3d day of January, 1872, the day after the barring of the claim from the Court of Claims by the statute of limitations, left to the company no tribunal for redress but the Congress of the United States.

The company being incorporated, its property not being confiscable, and its shareholders, with an inconsiderable exception, being loyal citizens of the Government, were, under the decisions of the Supreme Court, entitled to compensation. In 1864, while the war was in progress, in the leading case of the *Venice* (2 Wall., 258), Chief-Justice Chase, in delivering the opinion of the court, says:

"By excepting districts occupied and controlled by national troops from the general prohibition of trade, it indicated the policy of the Government not to regard such districts as in actual insurrection, or their inhabitants as subject, in all respects, to treatment as enemies. Military occupation and control, to work this exception, must be actual; that is to say, not illusory, not imperfect, not transient, but substantial, complete, and permanent. Being such, it draws after it the full measure of protection to persons and property consistent with a necessary subjection to military government. It does not, indeed, restore peace, or, in all respects, former relations; but it replaces rebel by national authority, and recognizes to some extent the conditions and responsibilities of national citizenship."

The principles thus announced by the Supreme Court in the case of the *Venice* have

been since then reaffirmed and extended by that tribunal in the case of the Union Bank *vs.* The Planter's Bank (16 Wall., 483), and in other cases.

The occupation of Mobile by the national troops was "substantial, complete, and permanent;" and national authority has been accepted and obeyed from that date.

But, beyond and above this, the fact that the property was accepted and used for seven months in the interest and to the great profit of the Government under a contract and promise to allow and pay "reasonable compensation" after the required service should have been completed, entails upon the Government an obligation which can not be avoided, and response to which should no longer be deferred. The use of the dock property was in no degree in the interests of the war, but was simply for pecuniary advantage, and proved of saving value to the Government to an extent so great as, by comparison, to render the just compensation of the company of trifling consideration.

The following letter from Colonel Wickersham indicates that this claim would have been paid promptly but for a difficulty, which in no way denied its merit:

WASHINGTON, D. C., *January 31, 1883.*

DEAR SIR: The parties interested in the claim of the Mobile Marine Dock, now pending before Congress, have requested me to make to you the following statement, to wit:

Nov. 5, 1865, I was assigned Ch. Q. M. Mil. Dept. of Alabama, hdqrs. at Mobile. A large number of claims for the use of buildings, steamboats, etc., by the Union forces during the summer of 1865, were presented to me for consideration. Among said claims was the one above referred to, and this claim, though analogous to all the others, was, I believe, the only claim which I was not duly authorized to adjust and pay. Part of this claim I held to be justly chargeable to the Navy Dept., but the Gov't's liability, under an undisputed promise to pay, seemed to me clear.

About the middle of November, 1865, I transferred the dock itself to the owners. Some material claimed by the owners I found in the custody and on the books of my subordinate quartermasters in charge of that species of public property.

In due course, under proper authority, said material was sold as other surplus public stores.

Many of the shareholders in this property were poor mechanics, and they are represented by gentlemen of the highest character.

I have no pecuniary interest in this claim, and write at the request of others, and to promote, if I can, the ends of justice.

I am, sir, with great respect, etc.,

M. D. WICKERSHAM,

Late Chief Quartermaster, Department of Alabama.

Hon. ANGUS CAMERON, U. S. S.,

Washington, D. C.

It appears from all the facts in proof that this claim grows out of the use of property by the Federal authorities for public purposes and under contract with the owners of said property for such use, and for reasonable compensation therefor. Such contracts and legitimate claims growing out of them have not been denied appropriate recognition by Congress. They in no way involve the principles of that class of war claims which have been refused payment, but belong rather to the class of claims for use and occupation under contract, which, when properly proved, have been uniformly approved and paid.